DEPARTMENT OF HEALTH AND HUMAN SERVICES

CFDA 93.917 HIV CARE FORMULA GRANTS

I. PROGRAM OBJECTIVES

The objective of this program is to assist States and territories in improving the quality, availability, and organization of health care and support services for individuals with Human Immunodeficiency Virus (HIV) disease /Acquired Immunodeficiency Syndrome (AIDS) and their families. These objectives may be accomplished through provision of services by the State or HIV/AIDS care consortia in a home or community setting, or by paying health insurance premiums that would not otherwise be available to ensure continuity of care.

II. PROGRAM PROCEDURES

Administration and Services

Grants are awarded annually, on a formula basis, to all 50 States, the District of Columbia, Puerto Rico, and territories of the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands following submission of an application to and approval by the HIV/AIDS Bureau, Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services. The responsible State agency, usually the State health department, is designated by the Governor.

The application addresses how the State plans to address each of the five specified program components: (1) HIV care consortia; (2) home and community-based care; (3) health insurance continuation program; (4) provision of treatments; and (5) State direct services. This includes the State's plans for the AIDS Drug Assistance Program (ADAP). ADAP is earmarked funding provided to the State as a separate amount in addition to the base formula grant amount, which includes supplemental funding.

States may use a variety of service delivery mechanisms. States may provide some or all services directly, or may enter into agreements with local HIV care consortia, associations of public and non-profit health care and support service providers, and community-based organizations that plan, develop, and deliver services for individuals with HIV/AIDS. The State also may delegate some of its authority to monitor provider agreements to a "lead agency" (fiscal agent) within the consortium, with specific responsibilities contained in a formal agreement between the State and that agency.

Source of Governing Requirements

The HIV CARE formula grant program is authorized under Part B of the Ryan White HIV/AIDS Treatment Modernization Act of 2006, which is codified at 42 USC 300ff-21 through 300ff-28. The latest amendments are contained in Pub. L. No. 109-415, enacted December 19, 2006. The compliance requirements in Section III are differentiated as follows: (1) for requirements unchanged by Pub. L. No. 109-415, the Pub. L. No. 109-415 citation has been added; (2) requirements changed by Pub. L. No. 109-415 are shown as "Prior to FY 2007 awards" and

"Effective with FY 2007 awards;" and (3) new requirements as a result of Pub. L. No. 109-415 are shown as "Effective with 2007 awards."

There are no regulations specific to this program.

Availability of Other Program Information

Further information about this program is available on the Internet at http://www.hab.hrsa.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look first to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Activities Allowed prior to FY 2007 awards

1. Funds may be used to provide outpatient and ambulatory health services, including case management services; medical, nursing services, substance abuse treatment, mental health treatment, and dental care services; diagnostics; monitoring; prophylactic treatment for opportunistic infections; treatment education to take place in the context of health care delivery; medical follow-up services; mental health, developmental, and rehabilitation services; home health and hospice care, whether such services are provided directly by the State or by eligible consortia or other service providers under agreement with the State (42 USC 300ff-22(1) and 300ff-23(a)(2)(A)).

2. Funds may be used for support services, such as transportation services, attendant care, homemaker services, day or respite care, benefits advocacy, advocacy services provided through public and non-profit private entities, and services that are incidental to the provision of services for PLWH, including nutrition services, housing referral services, and child welfare and family services (including foster care and adoption services) whether such services are provided directly by the State or by eligible consortia or other service providers under agreement with the State (42 USC 300ff-23(a)(2)(B)).

3. Funds may be used to provide inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities (42 USC 300ff-14(b)(1)(B) and 22(1)).

Activities Allowed for FY 2007 and prior awards

1. Funds may be used to provide home- and community-based care services for individuals with HIV/AIDS, including durable medical equipment, homemaker (removed with enactment of Pub. L. No. 109-415) or home health aide services and personal care services furnished in the individual's home, day treatment or other partial hospitalization services; home intravenous and aerosolized drug therapy (including prescription drugs administered as part of such therapy); routine diagnostic testing administered in the individual's home; and appropriate mental health, developmental, and rehabilitation services, whether such services are provided directly by the State or by eligible consortia or other service providers under agreement with the State (42 USC 300ff-22(3) and 42 USC 300ff-24; Pub. L. No. 109-415, section 2614(a)).

2. Funds may be used to provide assistance to ensure the continuity of health insurance coverage or receipt of medical benefits under a health insurance program, including risk pools, by eligible low-income individuals with HIV/AIDS (42 USC 300ff-22(a)(4), 300ff-25(a), and 300ff-27(b)(6)(a); Pub. L. No. 109-415, section 2615(a)).

3. Funds may be used to provide therapeutics to treat HIV/AIDS (42 USC 300ff-22(5); Pub. L. No. 109-415, section 2616).

4. Funds may be used for administration, including routine grant administration and monitoring activities, and activities associated with the grantee's contract award procedures. For first-line entities (consortia or service providers funded directly by the State), these activities may include usual and recognized overhead, including established indirect rates for agencies, management oversight of the specific programs funded by the grant, and other types of program support, such as quality assurance, quality control, and related activities (42 USC 300ff-28(b)(4); Pub. L. No. 109-415, sections 2618(b)(3)(C), (D), and (E)).

Activities Allowed effective with FY 2007 awards

Funds may be used for core medical services and support services for individuals with HIV/AIDs (Pub. L. No. 109-415, sections 2612 and 2684).

1. Core medical services with respect to an individual infected with HIV/AIDS (including co-occurring conditions, i.e., one or more adverse health conditions of an individual with HIV/AIDS, without regard to whether the individual has AIDS or whether the conditions arise from HIV) means (1) outpatient and ambulatory health services; (2) AIDS Drug Assistance Program treatments; (3) AIDS pharmaceutical assistance; (4) oral health care; (5) early intervention services meeting the requirements of Pub. L. No. 109-415, section 2612(d); (6) health insurance premium and cost sharing assistance for low-income individuals; (7) home health care; (8) medical nutrition therapy; (9) hospice services; (10) home and community-based health services; (11) mental health services;

(12) substance abuse outpatient care; and (13) medical case management, including treatment adherence services (Pub. L. No. 109-415, section 2612(b)(3)).

2. Support services means services that are needed for individuals with HIV/AIDS to achieve their medical outcomes (those outcomes affecting the HIV-related clinical status of an individual with HIV/AIDS) (for example, respite care for persons caring for individuals with HIV/AIDS, outreach services, medical transportation, linguistic services, referrals for health care and support services, and such other services specified by HRSA). Expenditures for or through consortia are considered support services (Pub. L. No. 109-415, sections 2612(c) and 2613(f)).

Activities Unallowed

1. Funds may not be used to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility (42 USC 300ff-28(b)(7); Pub. L. No. 109-415, sections 2612(f) and 2618(b)(6)).

2. Funds may not be used to make payments to recipients of services (42 USC 300ff-28(b)(7); Pub. L. No. 109-415, section 2612(f)).

3. Funds may not be used to make payments for any item or service to the extent that payment has been made or can reasonably be expected to be made for that item or service under any State compensation program, under an insurance policy, or under any Federal or State health benefits program (effective with FY 2007 awards, a program administered by or providing the services of the Indian Health Service) or by an entity that provides health services on a prepaid basis (42 USC 300ff-27(b)(6)(F); Pub. L. No. 109-415, section 2617(b)(7)(F)).

4. Funds may not be used for inpatient hospital services, or nursing home or other long-term care facilities (42 USC 300ff-24(c)(3); Pub. L. No. 109-415, section 2614(c)(3)).

5. Funds may not be used to pay any costs associated with creation, capitalization, or administration of a liability risk pool (other than those costs paid on behalf of individuals as part of premium contributions to existing liability risk pools) or to pay any amount expended by a State under Title XIX of the Social Security Act (Medicaid) (42 USC 300ff-25(b); Pub. L. No. 109-415, section 2615(b)(2)).

6. Funds may not be used for AIDS programs, or to develop materials, designed to promote or encourage, directly, intravenous drug use or sexual activity, whether homosexual or heterosexual (42 USC 300ff-84).

7. None of the funds made available under this Act, or an amendment made by this Act, shall be used to provide individuals with hypodermic needles or syringes so that individuals may use illegal drugs (42 USC 300-ff-1).

E. Eligibility

1. Eligibility for Individuals

To be eligible to receive assistance in the form of therapeutics, an individual must have a medical diagnosis of HIV/AIDS and be a low-income individual, as defined by the State (42 USC 300ff-26(b); Pub. L. No. 109-415, section 2616(b)).

2. Eligibility for Group of Individuals or Area of Service Delivery - Not Applicable

3. Eligibility for Subrecipients

a. Eligible subrecipients are consortia of one or more public and one or more nonprofit private (or private for-profit providers or organizations if such organizations are the only available providers of quality HIV/AIDS care in the area) health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV/AIDS (42 USC 300ff-23(a); Pub. L. No. 109-415, section 2613(a)).

b. To receive funding from the State, consortia must agree to provide, directly or through agreements with other service providers, essential health and support services, and must meet specified application and assurance requirements. These include conducting a needs assessment within the geographic area served and developing a plan (consistent with the State's comprehensive plan required by 42 USC 300ff-27(b)(4) or Pub. L. No. 109-415, section 2617(b)(4)) to meet identified service needs following a consultation process (42 USC 300ff-23(b) and (c); Pub. L. No. 109-415, sections 2613(b) and (c)).

c. For consortia otherwise meeting these requirements, the State shall give priority first to consortia that are receiving assistance from HRSA for adult and pediatric HIV-related care demonstration projects and then to any other existing HIV care consortia (42 USC 300ff-23(e); Pub. L. No. 109-415, section 2613(e)).

G. Matching, Level of Effort, Earmarking

1. Matching

a. States and territories (excluding Puerto Rico) with greater than 1 percent of the aggregate number of national cases of HIV/AIDS in the 2-year period preceding the Federal fiscal year in which the State is applying for a grant must, depending on the number of years in which this threshold requirement has been met, provide matching funds as follows (42 USC 300ff-27(d)(1) and (3); Pub. L. No. 109-415, section 2617(d)(1)):

Year(s) in Which Matching Required	Minimum Percentage of Non-Federal Matching	Ratio of Non-Federal to Federal Expenditures
First	16 2/3	$1 non-Federal/$5 Federal
Second	20	$1 non-Federal/$4 Federal
Third	25	$1 non-Federal/$3 Federal
Fourth and subsequent	33 1/3	$1 non-Federal/$2 Federal

Effective with FY 2007 awards

b. The matching requirement applies to the combined total of the base allocation and ADAP funds unless for ADAP the Secretary (or designee) requires non-Federal contributions in an amount equal to $1 for every $4 of Federal funds (Pub. L. No. 109-415, section 2618(a)(2)(F)(ii)(III)).

c. For entities not subject to the matching requirements in paragraph 1.a. above, non-Federal contributions in an amount equal to $1 for every $4 of Federal funds are required for ADAP funds (Pub. L. No. 109-415, section 2618(a)(2)(F)(ii)(III)).

2.1 Level of Effort - *Maintenance of Effort*

The State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State is applying for Title II/Part B funds (42 USC 300ff-27(b)(6)(E); Pub. L. No. 109-415, section 2616(b)(7)(E)).

2.2 Level of Effort - *Supplement Not Supplant* - Not Applicable

3. Earmarking

Effective for FY 2007 and prior awards

a. The State may not use more than 10 percent of the amounts received under the grant for planning and evaluation activities (42 USC 300ff-28(b)(3); Pub. L. No. 109-415, section 2618(b)(2)).

b. The State may not use more than 10 percent of the funds amounts received under the grant for administration (42 USC 300ff-28(b)(4); Pub. L. No. 109-415, section 2618(b)(3)(A)).

c. A State may not use more than a total of 15 percent of the amounts received for the combined costs for administration, planning, and evaluation. States and territories that receive a minimum allotment (between $200,000 and $500,000) may expend up to the amount required to support one full-time equivalent employee for any or all of these

purposes (42 USC 300ff-28(a)(1), 28(b)(5), and 28(b)(6); Pub. L. No. 109-415, sections 2618(b)(4) and (b)(5)).

d. The aggregate of expenditures for administrative expenses by entities and subcontractors (including consortia) funded directly by the State from grant funds ("first-line entities") may not exceed 10 percent of the total allocation of grant funds to the State (without regard to whether particular entities spend more than 10 percent for such purposes) (42 USC 300ff-28(c)(4)(A); Pub. L. No. 109-415, section 2618(b)(3)(B)).

e. For the purpose of providing health and support services to women, youth, infants, and children with HIV disease, including treatment measures to prevent the perinatal transmission of HIV, a State shall use for each of these populations not less than the percentage of Title II or Part B funds in a fiscal year constituted by the ratio of the population involved (women, youth, infants, or children) in the State with AIDS to the general population in the State of individuals with AIDS (42 USC 300ff-21(b); Pub. L. No. 109-415, section 2612(e)). This information is provided to the State by HRSA in the annual application guidance (Appendix II, Estimated Number/Percent of Women, Infants, and Children Living with AIDS in States and Territories).

f. A State shall use a portion of the funds awarded to establish a program to provide therapeutics to treat HIV/AIDS or prevent the serious deterioration of health arising from HIV/AIDS in eligible individuals, including measures for the prevention and treatment of opportunistic infections. The amount of this specific earmark for ADAP will be provided in the grant agreement. Of the amount earmarked in the grant agreement for this purpose, the State may use not more than 5 percent to encourage, support, and enhance adherence to and compliance with treatment regimens (including related medical monitoring) unless the Secretary (or designee) approves a 10 percent limit (42 USC 300ff-26(a); Pub. L. No. 109-415, sections 2616(a) and (c)(6)).

g. A State shall establish a quality management program to determine whether the services provided under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV disease and related opportunistic infection and, as applicable, to develop strategies for bringing these services into conformity with the guidelines. Funds used for this purpose may not exceed the lesser of 5 percent of the amount received under the grant or $3,000,000, and are not considered administrative expenses for purposes of the limitation under paragraph 3.b above (42 USC 300ff-22(d); Pub. L. No. 109-415, sections 2618(b)(3)(E)(ii)).

Prior to FY 2007 awards

Not less than 75 percent of the amounts received by a State shall be obligated to specific programs and projects and made available for expenditure no later than 120 days after receipt by the State (budget period beginning date as shown on the Notice of Grant Award issued by HRSA) (42 USC 300ff-28)(c)).

Effective with FY 2007 awards

Unless waived by the Secretary, HHS (or designee), not less than 75 percent of the amount remaining after reserving amounts for State administration and a clinical quality management program shall be used to provide core medical services to eligible individuals with HIV/AIDS (including services regarding the co-occurring conditions of those individuals) (Pub. L. No. 109-415, section 2612(b)(1)).

H. Period of Availability of Federal Funds

Effective with FY 2007 awards

1. Not less than 75 percent of the amounts received by a State shall be obligated to specific programs and projects and made available for expenditure not later than 150 days after receipt by the State (budget period beginning date as shown on the Notice of Grant Award issued by HRSA) in the case of the first fiscal year for which amounts are received and, in the case of succeeding fiscal years, 120 days after receipt. Any portion of a grant that has not been obligated during these time frames ceases to be available to the State for expenditure (Pub. L. No. 109-415, sections 2618(c) and (d)).

2. Funds are available for obligation by the State through the end of the one-year period beginning on the date on which funds from the award first became available to the State unless an extension is approved by the Secretary (or designee) for an additional one-year period beginning on the date on which the grant would have expired ((Pub. L. No. 109-415, section 2622(c)).

J. Program Income

Providers may impose charges for the provision of services only as follows (42 USC 300ff-27(c); Pub. L. No. 109-415, section 2617(c)):

INDIVIDUAL'S INCOME LEVEL	PERMISSIBLE AGGREGATE CHARGES
Less than or equal to 100 percent of official poverty line	No charges may be imposed
Greater than 100 percent of the official poverty line	Charges must be imposed according to a publicly available sliding scale fee schedule, BUT
Greater than 100 percent of the official poverty line and not exceeding 200 percent of that poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 5 percent of the annual gross income of the individual involved.
Greater than 200 percent of the official poverty line and not exceeding 300 percent of that poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 7 percent of the annual gross income of the individual involved.
Greater than 300 percent of the official poverty line	A provider may not, for any calendar year, impose aggregate charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

The poverty guidelines are available on the Internet at http://aspe.hhs.gov/poverty/ and are also published each year in the *Federal Register*.

The term "aggregate" applies to the annual charges imposed for all without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, co-payments, coinsurance, or other charges for services (42 USC 300ff-27; Pub. L. No. (c)(3); 2617()(3)).

These requirements apply to all service providers from which an individual receives Title II/Part B-funded services. The State shall waive this requirement for an individual service provider in those instances when the provider does not impose a charge or accept reimbursement available from any third-party payer, including reimbursement under any insurance policy or any Federal or State health benefits program (42 USC 300ff-27(c)(4)(A); Pub. L. No. 109-415, section 2617(c)(4)(A)).

Effective with FY 2007 awards

Any drug rebates received on drugs purchased from funds provided to establish a program of therapeutics must be used to support the types of activities otherwise eligible for funding under this program, with priority given to activities related to providing therapeutics (Pub. L. No. 109-415, sections 2616(g) and 2622(d)).

L. Reporting

1. Financial Reporting

a. *SF-269, Financial Status Report* - Applicable

b. *SF-270, Request for Advance or Reimbursement* - Not Applicable

c. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* - Not Applicable

d. *SF-272, Federal Cash Transactions Report* - Payments under this program are made by the Department of Health and Human Services, Payment Management System. Reporting equivalent to the SF-272 is accomplished through the Payment Management System and is evidenced by the PSC-272 series of reports.

2. Performance Reporting - Not Applicable

3. Special Reporting - Not Applicable